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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,203	10/05/2001	Richard Humpert	60174-021	8894

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EXAMINER

SAETHER, FLEMMING

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*HC*

## Office Action Summary

Application No.

09/890,203

Applicant(s)

HUMPERT ET AL.

Examiner

Flemming Saether

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 3, 7, 8, 10, 12, 15, 19, 20 and 22-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6, 9, 11, 13, 14, 16-18 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Election/Restriction***

Claims 3, 7, 8, 10, 12, 15, 19, 20 and 22-32 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b). The examiner maintains the restriction as proper and therefore will be maintained.

***Specification***

The disclosure is objected to because of the following informalities: the headings to the various sections of the disclosure are lacking.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

Claims 1, 2, 4-6, 9, 11, 13, 14, 16-18 and 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In the claims as amended, it is unclear if applicant intends to claim the function carrier in combination with the metal or plastic plate since it is only in the preamble and particularly in view of claim 21 which changes the preamble. Since the plate is only defined in the preamble and although the body of the claim refers back to the preamble, the plate is not required for completeness therefore, the combination with the plate will be considered as an intended use.

***Claim Rejections - 35 USC § 102***

Claims 1, 2, 4, 5, 6, 16-18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaibach (US 6,012,887). Kaibach discloses a function carrier comprising a function element formed as a bolt element (2) having a head (5) at one end with a rounded concave fillet (7) transitioning from the shaft to the head and, a rivet sleeve (8) received on the shaft and moveable in the axial direction having a deformable region (11) for deformation by the concave fillet (see Fig. 2). The sleeve further having a non-deformable ring portion (above the deformable portion) having a flat perpendicular sliding end face (the end surface) for transmission of a rivet force, a rectangular cross section and separated from the deformable portion by a shoulder portion (at 14) but, having a continuous tubular inner wall. As noted above, the combination with a metal or plastic plate is considered an intended use of which the device of Herb would be capable of.

Claims 1, 2, 4, 5, 6, 9, 11, 13, 16-18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Velasco (4,797,044). Velasco discloses a function carrier comprising a function element formed as a bolt element (1) having a head (not labeled) at one end including a concave fillet transitioning from the shaft to the head and, a rivet sleeve (3) received on the shaft and moveable in the axial direction having a deformable region (at the distal end region thereof) for deformation by the concave fillet (see Fig. 8). The sleeve having a "ring-like" portion, a flat perpendicular sliding end face for transmission of a rivet force, a rectangular cross section and separated from the

deformable portion by a shoulder portion (shown as member 4) but, having a continuous tubular inner wall. Velasco further discloses the function element to have a tool receiving recess (see Fig. 1, 7-9) for torque transmission and, with security features against rotation formed on the fillet (as see by grooves formed thereon). The concave is curved in the circumferential direction. Again, as noted above, the combination with a metal or plastic plate is considered an intended use of which the device of Velasco would be capable of.

***Claim Rejections - 35 USC § 103***

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaibach or Velasco as applied to claim 1 above, and further in view of Fischer (US 4,943,195). Fisher teaches the function element to be equipped with features providing security against rotation on the end of the head remote from the shaft to prevent (13, or 17). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide the device of either Kaibach or Velasco with rotation preventing features as disclosed in Fischer in order to prevent rotation of the function element which would provide for easier installation.

***In response to Applicant's Remarks:***

As noted above, the restriction is maintained.

The title has been corrected and the antecedent basis for the claim terminology has also been corrected. However, the specification still lacks headings to the various sections and the claims are also still generally narrative but, are not longer rejected under such grounds since their limitation are understood.

It should be recognized that the Herb reference has been replace by Kaibach for the showing of the concave surface rounded in the same orientation as in the instant invention. The arguments will be considered, as they would now apply to Kaibach.

Applicant argues that claims define over Velasco and presumably Kaibach because both Velasco and Kaibach have a notch, forming a position of weakness, in the exterior of the sleeve which is not present in the instant invention. In response, the examiner agrees that the instant invention does not include a notch such as shown in Velasco and Kaibach. However, the claims do not preclude the inclusion of a notch and therefore, the references continue to read on the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant next argues that the claims define over Velasco and possibly Kaibach because neither disclosed the concave transition region which is rounded. In response, the Kaibach was applied instead of Herb for the showing of the rounded concave region configured as disclosed in the instant application. As regards Velasco the examiner

maintains Velasco reads on the limitation as the transition region is concave in the axial direction and is rounded in the *circumferential* direction. The claims are to be given their broadest reasonable interpretation. See *In re Pearson*, 181 USPQ 641 (CCPA 1974).

Applicant argues that both Velasco and presumably Kaibach are anchor systems intended for use in concrete whereas the instant invention is for use with a plate. In response, as noted above, the combination with a plate is considered an intended use and an intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In the instant case, the anchor as disclosed in both Velasco and Kaibach would be capable of use in a metal or plastic plate since there is no limit as to the thickness of the plate. Indeed, the cement member in both Velasco and Kaibach can be considered a "plate" thus the only difference being the material and it is well know to change materials for a particular application. There is nothing that would preclude the anchor of either Velasco or Kaibach form being used in a metal or plastic plate.

Applicant argues, in regards to Velasco, that the instant invention is a one piece sleeve while the sleeve in Velasco is a two piece sleeve. In response, the claims do not

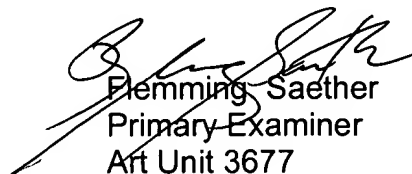
require a one piece sleeve and as discussed above. Again, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Applicant lastly argues that the reference to Fischer fails to remedy the deficiencies of Velasco and presumably Kaibach. In response, Fischer is not relied upon to remedy the alleged deficiencies but, is simply relied upon for its' features providing security against rotation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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